## THE HON'BLE SRI JUSTICE N.V. RAMANA

**Writ Petition No.1694 of 2004**

**Dated: 23.03.2006**

Between:

P. Nageswararao, S/o Narasimharao, R/o Sattenapalli, Guntur District.

**..... PETITIONER**

AND

The Managing Director, APSRTC, RTC Cross Roads, Hyderabad and another.

**.....RESPONDENTS**

## THE HON'BLE SRI JUSTICE N.V. RAMANA

**Writ Petition No.1694 of 2004**

**Order**:

This writ petition is filed seeking a Mandamus declaring the proceedings dated 16.06.1999 of respondent No.2 and the award dated 23.12.2002, passed by the Labour Court, Warangal, in I.D. No. 30 of 2001, as illegal and arbitrary.

The petitioner was appointed as Conductor in respondent No.2-A.P.S.R.T.C. in 1998. On 21.02.1999, while he was conducting the bus service on the route Jangaon to Tharigopula, a check was exercised, and for certain cash and ticket irregularities, he was issued a charge memo. Thereupon, a charge sheet was issued to the petitioner, for which he submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 21.05.1999 calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 16.06.1999, the respondents ordered his removal. Assailing the order of removal, the petitioner raised industrial dispute in I.D. No. 30 of 2001, which the Labour Court vide the award impugned in the writ petition, dismissed the I.D. confirming the order of removal.

Heard both the counsel and perused the award of the Labour Court as well as the counter affidavit filed by the respondents.

The main contention of the learned counsel for the petitioner is that the finding of the Labour Court on point No.1 that a fair and

reasonable opportunity was given to the petitioner in the domestic enquiry is not correct and the same is contrary to the record. It is the case of the petitioner that when he made an attempt to introduce his witnesses to defend his case, the Enquiry Officer without any valid reasons, refused to examine his witnesses, and despite the petitioner pleading that the domestic enquiry was conducted defectively, the Labour Court, without affording any opportunity to the petitioner to lead evidence, either on the question of validity of domestic enquiry or on the question of quantum of punishment, mechanically upheld the validity of the domestic enquiry and passed the impugned orders, which are wholly illegal, arbitrary and in violation of principles of natural justice. The respondents in their counter affidavit admitted that the Enquiry Officer did not examine the witnesses produced by the petitioner on the ground that the signatures affixed by them on the witness statements are not tallying with the signatures obtained at the time of check. That is not a ground to refuse to examine the witnesses produced by the petitioner for examination on his behalf, by the Enquiry Officer. The Labour Court also, without appreciating the said facts, simply held that a fair and reasonable opportunity was given to the petitioner during the domestic enquiry.

In "***Cooper Engineering Ltd., v. P.P. Mundhe***[1]", the apex Court observed thus.

> "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue……."

Having regard to the facts and circumstances of the case and in view of the law laid down by the Supreme Court in ***Cooper***

***Engineering Limited's Case*** (1 supra), the impugned award is liable to be set aside and the matter be remitted to the Labour Court for fresh disposal from the stage of deciding the validity of the disciplinary enquiry report.

Accordingly, the writ petition is allowed and the impugned award is set aside. The matter is remitted to the Labour Court for fresh adjudication, after giving a reasonable opportunity to the petitioner to adduce evidence on his behalf. No costs.

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**N.V. RAMANA, J.**

Date: 23.03.2006
Nsr/Ksr

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1 (1975) 2 Supreme Court Cases 661